PROGRAM/SUBJECT: Metalliferous Mines License Tax

FEDERAL GRANTOR: Not applicable

TYPES OF RECIPIENTS: Counties initially receive the funds, and allocate a portion of the taxes to school districts.

SOURCE OF AUTHORIZATION AND REGULATIONS: Sections 15-37-117, 7-6-2225, 7-6-2226, 20-9-231, 90-6-307, 90-6-402, 90-6-404, MCA

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I. PROGRAM OBJECTIVES:

The objective of the metalliferous mines license tax allocation is to help local government units, following a hard-rock mine's workforce reduction or closure, to stabilize mill levies, retire local government debt, and stabilize and diversify impact area economies. Counties, and school districts within the counties, also have the option to expend a portion of these allocations during the productive life of the mine. The portion which counties may expend during the productive life of the mine is limited to expenditures for planning and economic development purposes, primarily to enable them to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure.

II. PROGRAM PROCEDURES:

Metal mine operations pay metalliferous mines license taxes annually on that portion of their gross proceeds that exceeds $250,000 a year. The Department of Revenue (DOR) collects the taxes and distributes 25% of the proceeds to eligible counties. Counties that are eligible to receive this distribution are:

1. those identified in an impact plan approved under Section 90-6-307, MCA, as experiencing fiscal and economic impacts resulting in increased local government costs or increased employment, or
2. if there is no impact plan, those counties in which a mine is located.

Counties must reserve at least 37.5% of the money received in a hard-rock mine trust account and must allocate the balance among the metal mines license tax accounts of the county and the affected school districts within the county.

II. PROGRAM PROCEDURES - continued:

Although DOR is responsible for the allocation of the metalliferous mines license tax monies **to** the counties, it has no responsibility for the allocation or use of the tax moneys **within** the counties. The Hard-Rock Mining Impact Board of the Department of Commerce (the Board) also has no direct responsibility for these tax moneys. However, because the allocation of metalliferous mines license tax monies is related to provisions of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act, over which the Board has jurisdiction, the Board has suggested some clarification concerning the allocation of the metalliferous mines license tax monies within the counties.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

1. **Compliance Requirements:**

- Metalliferous mines license taxes remitted by the State to counties may be held in the county metal mines license tax account (fund) (BARS Fund No. 2896) until distribution is made by the county commissioners. The county commissioners may hold money in the account for any time period they consider appropriate. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies. Money in this fund must be invested as provided by law, with the interest and income from the investments being credited back to that fund. (Section 7-6-2226, MCA)

- Upon distribution, the money is allocated as follows (Section 15-37-117(1)(e), MCA):

  1. At least 37.5% of the tax revenues must be deposited to the county hard-rock mine trust account (fund) established in Section 7-6-2225, MCA (BARS Fund No. 2895). The money must remain in the account and may not be appropriated by the governing body until a mining operation has permanently ceased all mining related activity, or the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period. If these conditions occur, the governing body of the county must allocate the funds in the account (fund) as provided for in Section 7-6-2225, MCA **(see compliance requirements on page 7 of 8)**. Money in the hard-rock mine trust account (fund) must be invested, and interest credited back to that fund (Section 7-6-2225, MCA).

  2. The remaining money must be allocated as follows:
     a. 33⅓% to the county to be used by the county for general planning functions or economic development activities as described in 7-6-2225 (3)(c) through (3)(e) **(see compliance requirements on page 7 of 8)**. This money may be deposited in the metal mines license tax fund (BARS Fund No. 2896).
     b. 33⅓% to the elementary school districts within the county that have been affected by the development or operation of the metal mine. These moneys

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

1. **Compliance Requirements - continued:**

may be deposited to the school district's metal mines tax reserve fund (Fund No. 24, non-budgeted fund) if such a fund is established by the school district's board of trustees. The school board may hold money in the fund for any time period they consider appropriate. Money held in the fund maynot be considered as fund balance for the purpose of reducing mill levies. Money may be expended from the fund for any purpose provided by law. Moneys in the metal mines tax reserve fund must be invested, and interest and income from the investments must be credited back to the fund. (Section 20-9-231, MCA)

c. 33⅓% to the high school districts within the county that have been affected by the development or operation of the metal mine. These moneys may be deposited to the school district's metal mines tax reserve fund (Fund No. 24, non-budgeted fund) if such a fund is established by the school district's board of trustees. The school board may hold money in the fund for any time period they consider appropriate. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies. Money may be expended from the fund for any purpose provided by law. Moneys in the metal mines tax reserve fund must be invested, and interest and income from the investments must be credited back to the fund. (Section 20-9-231, MCA)

3. When an impact plan for a large-scale mineral development approved pursuant to Section 90-6-307, MCA, identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under Section 15-37-117(1)(e), MCA, in a manner similar to that provided for property tax sharing under Title 90, Chapter 6, Part 4, MCA. **(See compliance requirement regarding jurisdictional revenue disparities on page 4 of 8)** (Section 15-37-117(2), MCA)

Suggested Audit Procedures:

- Test receipts to determine if the metalliferous mines license tax funds were held in the county metal mines license tax fund (BARS Fund No. 2896) prior to distribution. If Fund No. 2896 was not used, determine in which fund the metal mines license tax funds were held prior to distribution, or whether they were distributed directly to other funds as provided by Section 15-37-117, MCA. Verify that these funds were invested prior to distribution, and that the interest income was credited to the fund.

- Determine that, upon distribution, at least 37.5% of the metal mines license tax funds, and an equal percentage of any accrued interest, were deposited to the hard-rock mine trust account (BARS Fund No. 2895).

- Verify that the monies in the hard-rock mine trust fund were invested during the audit period, and interest income was credited to the fund. Also, verify that no expenditures were made from this fund until a mining operation has permanently ceased all mining related activity, or the number of persons employed full-time in

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period. **(NOTE: See compliance requirements on page 7 of 8 for a discussion of allowable expenditures from the hard-rock mine trust reserve fund.)**

- Determine that, after the above 37.5% allocation, the remainder of the metalliferous mines license tax funds were allocated to the county and affected elementary and high school districts as specified above.

- When a "jurisdictional revenue disparity" is identified, verify that the metalliferous mines license taxes received by a county were allocated in a manner similar to that provided for property tax sharing under Title 90, Chapter 6, Part 4, MCA. **(see compliance requirement below)**

- Test expenditures made from the county's share of the metalliferous mines license taxes to determine that the funds were used only for general planning functions or economic development activities.

2. **Compliance Requirements:**

- Section 90-6-402, MCA, defines "jurisdictional revenue disparity" as "property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the [hard-rock mining impact] board in an approved impact plan." When an impact plan identifies a jurisdictional revenue disparity, the county is to distribute the proceeds of the metal mines license tax monies "in a manner similar to that provided for property tax sharing" under Title 90, Chapter 6, Part 4. (Section 15-37-117(2), MCA).

- Section 90-6-404, MCA, sets forth the following allocation of the increase in taxable value due to a large-scale mineral development (i.e. property tax sharing), when a jurisdictional revenue disparity is found to exist:
  "(1)The local government unit [county, municipality, or school district] in which the ore body or the mineral deposit being mined is located must be allocated 20% of the total increase in taxable valuation of the gross proceeds
  (2) The remaining increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:
    (a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

2. **Compliance Requirements - continued:**

municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development."

- **NOTE:** *The following comments have been supplied by a representative of the Hard-Rock Mining Impact Board, in order to address some of the problems which have arisen in the interpretation of the statutes dealing with jurisdictional revenue disparity and property tax sharing, as presented above.*
  "Property tax base sharing, as specified above, includes a 20% minimum allocation of the mine's gross proceeds taxable value to counties and school districts in which the ore body is located, and includes allocations to municipalities. However, Section 15-37-117(1)(e), MCA, provides only that metal mines license taxes be apportioned to counties experiencing fiscal and economic impacts from mining operations, and to the affected school districts within these counties. The section is silent as to allocations to municipalities or special reservations for local governments in which the ore body is located. Section 15-37-117(2), MCA, which directs the county to distribute the proceeds under 15-37-117(1)(e), MCA, 'in a manner similar to that provided for property tax sharing' is also silent as to municipalities and local governments in which the ore body is located.

  "Mindful that it has no authority in the county's distribution of metal mines proceeds, the Board suggests that the distribution directive of Section 15-37-

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

2. **Compliance Requirements - continued:**

117(2), MCA, might be interpreted to apply only to the distribution of metal mines license tax proceeds among the already-named categories (i.e., the county and affected school districts within the county), because both subsection (1)(e) and subsection (2) are silent as to municipalities. Further, municipalities have not been granted the statutory authority to establish their own metal mines reserve accounts, an authority which is given to counties and affected school districts."

Department of Commerce comment: Property tax sharing is intended to help affected local government units meet ongoing, increased costs resulting from the operation of the mineral development, whereas the allocation of metal mines license tax proceeds is primarily intended to help local government units address both the fiscal and economic impacts of mine workforce reduction and mine closure.

"The Board also suggests that, given the fact that property tax base sharing and the allocation of metal mines license tax proceeds are designed to serve different purposes, Section 15-37-117(2), MCA, might be broadly interpreted to reflect these differences. The purpose of (2) might be simply to ensure that the distribution is made according to an articulated rationale that relates to the purposes for which the proceeds are being distributed and that reflects the relative needs of the recipient local government units with regard to those purposes."

"Note: The county commissioners might comply with the distribution directive [of Section 15-37-117(2), MCA,] in a variety of ways, including patterning the distribution after the property tax base sharing formula set forth in Section 90-6-404, MCA, or according to the modified formula required by the impact plan itself; or, the commissioners might devise a distribution formula more directly appropriate to the purposes of the distribution (fiscal and economic impacts of workforce reduction and mine closure), taking into account factors such as where mine-related employment occurs and where mine-related employees reside, where mine-related students reside or attend school, where local government costs and revenue occur as a result of the mineral development, and, if it is determined that municipalities are eligible to share in the distribution, where planning and economic development need to occur to offset the adverse economic effects of workforce reduction or mine closure."

Suggested Audit Procedures:

- Through inquiry and review of the impact plan, determine if a jurisdictional revenue disparity has been identified. If so, obtain documentation to support the allocation of metal mines license tax revenue that was directed by the county commissioners.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

Documentation may be found in the following:

1. the annual report submitted by the mineral developer (this document may contain demographic information related to mining activities in support of a particular distribution);
2. the impact plan, filed in the County Planning office; and
3. tax base sharing information on file with the County Assessor.

- Review resolutions adopted by the commissioners which document the rationale for distributing the metal mines license tax proceeds. Compare this rationale with the tax base sharing provisions of the impact plan to determine whether, given the differences in purposes, there appears to be a reasonable correlation.

3. **Compliance Requirements:**

- The metalliferous mines license tax money allocated to the county hard-rock mine trust account (BARS Fund No. 2895) must remain in that account and may not be appropriated by the governing body until (Section 7-6-2225, MCA):
  1. a mining operation permanently ceases all mining activities, or
  2. the number of full-time employees in mining activities is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

- If the circumstances in either 1. or 2. above occur, the money must be allocated by the county as follows:
  1. At least 1/3 of the funds proportionally to affected high school districts and elementary school districts in the county. **(NOTE: The commissioners must determine what "proportionally" means in relationship to how much each district is expected to be affected by the workforce reduction or mine closure.)**
  2. The remaining money is to be used by the county to:
     a. pay for outstanding capital project bonds or other expenses incurred prior to the end of the mining activity or the reduction in the mining work force;
     b. decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;
     c. promote diversification and development of the economic base within the jurisdiction of the local government unit, through assistance to existing business for retention or expansion, or to assist new business;
     d. attract new industry to the impact area;
     e. provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity; or
     f. provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

Suggested Audit Procedures:

- Determine that the conditions of mine closure or workforce reduction, specified above, were met before any monies were distributed or expended from the county hard-rock mine trust fund.

- Test distributions from the county hard-rock mine trust fund to verify that at least 1/3 of the monies, including interest earnings, were distributed proportionally to the affected elementary and high school districts in the county.

- Test expenditures made from the county hard-rock mine trust fund to determine that monies were used for the purposes listed above. Verify that any grants and loans made from the fund were made to local government units affected by the mine closure or reduction in mine workforce.